IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
SECOND APPEAL NO.558 OF 2006

Julekha Mohammad Kasim Khan & Ors. ...Appellants

vs.

Fairoja Abdul Gani Shaikh and ors. ...Respondents

Mr.K.K.Jadhav for the Appellants.
Ms Neelam Nikale h/f Mr.Vijay Gharat for the Respondent

CORAM: A.S.OKA,J.
DATE : JULY 16, 2007.

P.C.:

1. Heard Advocates for the parties. The Appellants are the original Defendants. First to third Respondents are the original Plaintiffs. The trial court decreed the suit by holding that the second Respondent has 1/8th share in the suit property and the third Respondent has 2/8th share in the suit property. The trial court held that the fourth defendant i.e. the fourth Appellant herein is entitled to 1/8th share in the suit property and the first Appellant is having 12.5% share in the suit property. The trial court directed that a Commissioner be appointed to effect the partition.

2. In the Appeal preferred by the Appellants, while confirming the decree of partition, the learned Additional District Judge has made a modification by holding that the original Plaintiff No.3 and the Defendant Nos.2 and 3 shall have 14/64th share each , the first defendant shall have

8/64th share and the Plaintiff No.2 and Defendant No.4 shall have 7/64th share in the suit property.

3. There is an affidavit filed by the Appellant No.3. The learned Counsel for the Appellants has relied upon the said Affidavit and in particular paragraph No.4 thereof which reads thus :

"4. The suit premises admeasure about 14’ x 21’ consisting of a room. The Appellant Nos.1,2 and occupying the same. There are about 9 member in the family of the Appellant. Appellant No.2 does labour work and Appellant No.3 is a Rickshaw driver. The Appellants have no other premises."

He placed reliance on the provision of the Partition Act,1893 and in particular sections 2 and 3 of the said Act of 1893. He submitted that the courts below have completely ignored the provisions of the said Act of 1893.

4. I have considered the submissions. After having perused the Judgments of the courts below, it is difficult to find fault with the shares fixed by the Appellate Court. The decree passed by the Appellate Court is a preliminary decree. The decree directs that a Commissioner be appointed to partition the property. It is obvious that in the final

decree proceedings the parties will be permitted to file their objections to the report of the Commissioner. While considering the report of the Commissioner and objections, if any, filed by the parties, the concerned court is bound to take into consideration the relevant provisions of the Partition Act,1893 and the concerned court is bound to permit the parties to exercise their rights, if any, under the said Act of 1893.

5. No substantial question of law arises. Subject to clarification made above, Second Appeal is dismissed with no order as to costs.

JUDGE